



January 19, 2000

Mr. Monty Wade Sullivan  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2000-0170

Dear Mr. Sullivan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131481.

The City of Houston (the "city") received a request for the crime statistics for the last three years regarding a certain address, criminal activity information for September 1996 through September 1998 regarding the same address, and the full investigative report regarding a specific murder that occurred at that address. You state that the city will provide the requestor with the crime statistics and the criminal activity information. However, you claim that the entire investigative file is excepted from disclosure under section 552.108 of the Government Code, and alternatively, that portions of the investigative file are excepted under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we note that the submitted information includes documents that have been filed with a court. Documents filed with a court are generally considered public. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). Thus, documents of this type must be released to the requestor. We have marked these documents to be released.

The submitted information also includes an executed search warrant probable cause affidavit. Amended article 18.01(b) of the Code of Criminal Procedure provides:

---

<sup>1</sup>The submitted information consists of documents, two videotapes, an audiotape, and several photographs.

No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. *The affidavit is public information if executed*, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Crim. Proc. Code 18.01(b))(emphasis added). Information specifically made public by law outside the act may not be withheld pursuant to any of the act's exceptions to required public disclosure. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, we conclude that the city must release the executed search warrant probable cause affidavit. We have marked the affidavit that must be released.

The rest of the information at issue may be withheld under section 552.108(a)(1) of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." You state that the investigative file relates to an ongoing criminal case. Based upon this representation, we conclude that the release of the investigative file, other than those records subject to required release as described above, would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the investigative file. Although section 552.108(a)(1) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

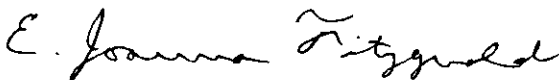
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673- 6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\nc

Ref: ID# 131481

Encl: Submitted documents

cc: Ms. Leah Faucett  
5599 San Felipe, Suite 1600  
Houston, Texas 77056  
(w/o enclosures)